



# DEPARTMENT OF PUBLIC ADVOCACY

## Office of the Director, Trial Services Division

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July 29, 2010

TO: Justices, Kentucky Supreme Court

FROM: Damon L. Preston, Director, Trial Services Division

RE: Comment on Proposed Amendments to Criminal Rule 7.24

The Department of Public Advocacy submits the following comments on the proposed amendments to Rule of Criminal Procedure 7.24:

1. There is ambiguity in the proposed reciprocal provision. DPA presumes the intent is to make the amendments in Sections (1) and (2) work in tandem. The language, however, could be read more broadly. The amendment to Section (2) creates a trigger for reciprocal discovery if “the defendant requests disclosure of the Commonwealth’s experts under 7.24(1).” If the intent is to limit reciprocal discovery of the expert’s summary to cases when the defendant has requested a Commonwealth expert’s summary, then the amendment should be changed to only apply when the defendant requests disclosure under “7.24(1)(c).” Without the limitation to subsection (c), a court could require disclosure of a defendant’s expert summary after only a broad defense request for expert lab reports under 7.24(1)(b).

If the rule is to be approved, the Department recommends that reciprocal disclosure be explicitly limited to follow only a defendant’s request under RCr 7.24(1)(c).

2. DPA is further concerned about the lack of standards and procedures to be applied when a challenge is made to a summary of expected expert testimony. By what standard is accuracy of the summary of the witnesses’ opinions and completeness of the “bases and reasons for those opinions” to be determined? May an expert witness be cross-examined with the summary at trial if testimony is inconsistent? Since any deficiencies in the summary would not become apparent until the testimony is delivered at trial, great complications would arise as to how to remedy any error.
3. As to indigent clients and Commonwealth’s witnesses, the rule would increase costs to the state as additional time would be needed for the expert witnesses to prepare or provide information for the summary.